



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 27547039

Date: Sept. 18, 2023

Appeal of St. Louis, Missouri Field Office Decision

Form I-601, Application for Waiver of Grounds of Inadmissibility

The Applicant, a native and citizen of India, seeks a waiver of inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for fraud or misrepresentation. The Director of the St. Louis, Missouri Field Office denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), concluding that the Applicant did not establish that she had a qualifying relative, the initial requirement to establish eligibility for a waiver of inadmissibility.¹ The waiver application was also denied as a matter of discretion. On appeal, we remanded the case back to the Director based on new evidence, in particular a DNA test confirming the mother-child relationship between the asserted qualifying relative and the Applicant. Upon remand, the Director found that the Applicant established hardship on a qualifying relative mother, however the Director denied the waiver application as a matter of discretion.

The matter is now before us on appeal. On appeal, the Applicant submits evidence and a brief asserting that the Director's discretionary decision was erroneous. The Administrative Appeals Office reviews the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will remand the matter to the Director for the entry of a new decision.

I. LAW

Any foreign national who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under the Act, is inadmissible. Section 212(a)(6)(C)(i) of the Act. U.S. Citizenship and Immigration Services (USCIS) may waive this inadmissibility if refusal of admission would result in extreme hardship to the U.S. citizen or lawful permanent resident spouse or parent of the foreign national. If the foreign national demonstrates the existence of the required hardship, then they must also show that USCIS should favorably exercise its discretion and grant the waiver. Section 212(i) of the Act.

¹ The Director determined that the Applicant did not establish a mother-child relationship with her asserted qualifying relative. Specifically, the Director noted that the Applicant's birth certificate did not list a mother, the purported mother was listed as her aunt in her 2020 federal tax return, and U.S. Department of State information reflects that birth certificates are unavailable for individuals born prior to April 1, 1970, which includes the Applicant.

The burden is on the Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). We must balance the adverse factors evidencing the Applicant's undesirability as a lawful permanent resident with the social and humane considerations presented to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300 (citations omitted). The adverse factors include the nature and underlying circumstances of the inadmissibility ground(s) at issue, the presence of additional significant violations of immigration laws, the existence of a criminal record, and if so, its nature, recency and seriousness, and the presence of other evidence indicative of bad character or undesirability. *Id.* at 301. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where residency began at a young age), evidence of hardship to the foreign national and his or her family, service in the U.S. Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to good character. *Id.*

The burden of proof is on an applicant to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010); section 291 of the Act, 8 U.S.C. § 1361.

II. ANALYSIS

After the Applicant established she had a qualifying relative for the waiver, the Director of the St. Louis, Missouri Field Office denied the waiver, concluding that, although the Applicant had established extreme hardship to her U.S. citizen mother would result from her continued inadmissibility, she did not merit a waiver as a matter of discretion.

On appeal, the Applicant does not contest her inadmissibility, a finding the record supports. She asserts that she merits a discretionary waiver. She specifically contends that the Director accorded minimal weight to the numerous positive factors in his case and disproportionately weighed the negative factors. On appeal, the Applicant offers one new document, a recently obtained statement from a Building and Fire Inspector from the city of [REDACTED] Illinois, attesting that he observed and was introduced to the Applicant and her mother and visited the suite where they "were in fact in residence" together in a hotel owned by their family member at the time of the inspection. The Inspector's statement supports the fact that the Applicant and her mother have a permanent residence in [REDACTED] Illinois and that they live together:

This letter is to verify that my office performed a routine annual inspection on 5/26/2022 of the [REDACTED] Hotel at [REDACTED] Illinois. I was informed by the owner of the hotel that his mother and grandmother were permanently living at the hotel in a suite designed for long term stays numbered 213. Upon inspection of this suite, I observed and was introduced to the owner [N-P-'s]² mother [M-P-] and grandmother [D-P-]. I can confirm that the suite is suitable for permanent occupation and that the two women were in fact in residence there at the time of inspection.

² We use initials to protect individual identities.

The Building and Fire Inspector's letter is from a government employee corroborating the Applicant's assertion that she and her mother reside together for a portion of the year in Illinois. The record also includes evidence that the Applicant and her mother reside together a portion of the year in Florida. In both locations, they reside in a hotel owned by a family member.

While the Applicant has not adequately corroborated that she and her mother have resided together from 2004 to present in [REDACTED] Illinois and in Florida continuously for 19 years, that is not fatal to the waiver application. The paucity of evidence on this point is merely one factor that must be considered by the Director in the totality of the circumstances in exercising discretion. If the Director finds the Applicant and her mother reside together currently and the Applicant is currently the primary caretaker for her 87-year-old mother, that would be material to the prospective extreme hardship that the Applicant's mother will suffer if the Applicant is removed, regardless whether the Applicant has substantiated she and her mother continuously resided together for 19 years. Whether the Applicant corroborated her claim regarding the past 19 years is material to the discretionary analysis but not fatal to it.

While the Director denied the waiver application based on discretion, the Director did not provide sufficient analysis for the determination, nor did the Director list the positive and negative factors and then consider whether all the Applicant's positive factors outweigh the negative factors. All factors must be considered in making a discretionary determination. See 1 USCIS Policy Manual E.8(C)(3), <https://www.uscis.gov/policymanual> ("The act of exercising discretion involves weighing both positive and negative factors and considering the totality of the circumstances in the case before making a decision").

A person's threshold eligibility for the benefit sought is generally a positive factor. Therefore, absent any negative factors, USCIS ordinarily exercises discretion positively. See *Matter of Arai*, 13 I&N Dec. 494, 496 (BIA 1970). See *Matter of Lam*, 16 I&N Dec. 432 (BIA 1978).

Here, the negative factors are that Applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation, because she misrepresented several pieces of information related to her identity while seeking to procure admission to the United States on August 25, 1996.

Additionally, the Director found the Applicant's failure to independently corroborate that her mother lived with her continuously since 2004 to be a negative discretionary factor. Without corroboration of the purported 19-year history of their joint residence, however, the Director was still able to determine that the Applicant's mother would suffer extreme hardship prospectively if the Applicant were removed. The Director has not discussed the nature and the extent of the extreme hardship that the Applicant's 87-year-old mother would suffer, or articulated the weight given to such hardship as a positive discretionary factor. The decision does not provide analysis to support the Director's conclusion that the Applicant's past history regarding credibility outweighs her mother's extreme hardship in balancing the favorable and unfavorable discretionary factors.

It is undisputed, however, that the Applicant is her 87-year-old mother's primary caretaker and that her mother has numerous medical issues serious enough to warrant a finding by the Director that the Applicant's mother would suffer extreme hardship if the Applicant were removed. The record reflects

that the Applicant helps with bathing her mother, takes her mother to medical appointments, and does laundry and shopping for her mother, who is blind in one eye and has failing eyesight in her other eye.

On remand, the Director should consider, in the totality of the circumstances, the negative factors mentioned above against the positive factors related to discretion, including but not limited to, the severity and type of health concerns of the Applicant's mother, hardship on the Applicant's non-qualifying relative siblings who cannot be primary caretakers for their mother, the Applicant's family ties in the United States, payment of taxes, lack of criminal record, and any other favorable discretionary factors raised to the Director upon remand.

III. CONCLUSION

The Director did not provide sufficient analysis to support their decision regarding discretion, failing to list the positive and negative factors and weigh them in the totality of the circumstances. Thus, we are remanding the matter to the Director for full consideration of these and other claimed positive factors in adjudicating the discretionary waiver.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.